



April 18, 2018

Ms. Roxanne Rothschild  
Deputy Executive Secretary  
National Labor Relations Board  
1015 Half Street SW  
Washington, DC 20570

**VIA ELECTRONIC SUBMISSION**

Re: Representation-Case Procedures: Request for Information (RIN 3142-AA12)

Dear Ms. Rothschild:

American Trucking Associations, Inc. (ATA) appreciates the opportunity to comment in response to the National Labor Relations Board's request for public information regarding the amendments to the Board's representation case procedures promulgated in the Board's December 15, 2014 final rule (the Election Rule), 79 Fed. Reg. 74308. Specifically, the Board expressed an interest in public comment on whether the Election Rule should be retained in its current form, retained with modifications, or rescinded.

ATA is the national association of the trucking industry, comprising motor carriers, state trucking associations, and national trucking conferences, and created to promote and protect the interests of the national trucking industry. Its direct membership includes approximately 1,800 trucking companies and industry suppliers of equipment and services; and in conjunction with its affiliated organizations, ATA represents over 30,000 companies of every size, type, and class of motor carrier operation. The motor carriers represented by ATA haul a significant portion of the freight transported by truck in the United States and virtually all of them operate in interstate commerce among the states. ATA regularly represents the common interests of the trucking industry before regulatory agencies and in courts throughout the nation.

ATA believes that the Election Rule should be rescinded. The Election Rule constitutes, in large measure, a solution in search of a problem. As the dissent to the Rule points out, more than 90% of initial elections occur within 56 days of the petition's filing. 79 Fed. Reg. at 74,456-57. Rather than implement targeted measures to address the outlier cases, however, the Board undertook a wholesale revision of election procedures, and issued a Rule that dramatically alters the fair balance between employer and employee interests established by Congress in the National Labor Relations Act (NLRA). The approach adopted in the Rule contravenes

Congress's policy and curtails employers' right to communicate under Section 8(c) of the Act, in particular by greatly reducing the time between the filing of a petition and an election.

Prior Boards and the U.S. Supreme Court have recognized that federal labor policy favors "uninhibited, robust, and wide-open debate in labor disputes," and that the enactment of Section 8(c) of the NLRA "manifested a congressional intent to encourage free debate on issues dividing labor and management." *Chamber of Commerce of the United States v. Brown*, 554 U.S. 60, 67-68 (internal quotation marks and citations omitted). The practical result of the Election Rule, however, is to render illusory the opportunity for "wide-open debate", and the employer's rights under Section 8(c). The impact of this change is particularly acute with respect to small businesses—which make up the vast majority of the trucking industry—who are especially burdened in exercising their right to express "views, argument or opinion" in the compressed time frame allowed under the Election Rule.

Most trucking companies, including ATA's members, are relatively small companies in which small management teams are broadly focused on all aspects of the business—operations, finance, marketing, sales, customer relations, human resources, technology, and so on—on a daily basis. Indeed, the overwhelming majority of trucking companies in the U.S. qualify as small businesses under the Small Business Administration criteria. These small companies, with limited resources to constantly monitor union organizing efforts, cannot as a practical matter fully exercise their rights under Section 8(c) on the timeline envisioned in the Election Rule. Neither an arbitrary desire to expedite the time to election generally, nor a concern for the small number of outlier elections that stretch beyond two months after the filing of the petition, justifies the practical elimination of these important statutory rights.

Unlike unions—which are in the business of working on unionization campaigns—trucking companies are in the business of moving the nation's freight. Imagine a small trucking company that is served electronically with a petition for union representation on the same day it is filed at the NLRB by the union. Assume the very real possibility that the union has followed the tried and true formula in the AFL-CIO and Change to Win manuals of organizing quietly and surreptitiously until 70% to 80% of the potential voters have signed authorization cards before filing its petition. Assume the very real likelihood that the employer has been unaware that this organizing activity has been underway.

Prior to the Election Rule, such an employer would frequently have five to six weeks to engage in robust debate and present the other side of the story for its employees' consideration. Under the Election Rule, the employer would have a mere seven days to prepare and submit its statement of position (forfeiting the right to pursue any issues not included), with an election in as few as ten days. In that short span of time, a business confronted with an unexpected petition would have to decide

what position it wished to take, plan and customize a message consistent with that position, educate itself on how to deliver its message consistent with the NLRA, and deliver the message—all while continuing the day-to-day obligations of successfully managing the company.

This would be a considerable challenge even for some large businesses with in-house labor counsel or appropriate outside legal resources on tap, who may be able to hit the ground running. But a small business without such resources will also have to decide whether to seek legal advice, figure out where to get that legal advice, interview multiple firms, consider the reporting implications of obtaining representation, decide which firm to retain, consider hiring non-lawyer persuaders, and so on. With all of this to accomplish before an election day that can arrive in as little as ten days, the employer's opportunity to tell its side of the story and engage in debate—as contemplated by Congress when it enacted Section 8(c) of the NLRA—will often be over before it has begun. And by encouraging a surprised employer to mount a mini-campaign under extreme time pressure, the Election Rule perversely makes it more likely that employers—especially small employers who have not previously experienced an organizing campaign—will begin to speak to employees without obtaining legal advice and engaging in careful planning and training to ensure compliance with the NLRA.

To be clear, while the compressed election schedule established by the Election Rule is at the heart of ATA's concerns, it is only one of the ways in which the Rule discourages dialogue and debate between labor and management. Beyond this, ATA generally adopts and endorses the comments submitted by the Coalition for a Democratic Workplace, of which ATA is a signatory.

Sincerely,

A handwritten signature in black ink, appearing to read 'R. Pianka', with a stylized flourish at the end.

Richard Pianka  
Deputy General Counsel